

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-151315-11

Date:

May 30, 2012

Legend

Decedent

Date 1

Date 2

Date 3

Date 4

Date 5

Date 6

Date 7

Date 8

Date 9

State

Attorney

County Court

Individual

Charity

a

b

Citation 1

Citation 2

Citation 3

Dear :

This letter responds to your authorized representative's letter dated December 9, 2011, requesting an estate tax ruling with respect to the proposed settlement agreement.

The facts and representations submitted are summarized as follows:

Decedent, a resident of State, hired Attorney to prepare her will. The will was executed on Date 2. The third paragraph of the will provides that the residue of Decedent's estate is to be distributed as follows:

If [Attorney] survives me, to [Attorney], pursuant to the following: I have expressed my wishes to [Attorney] to handle this, my inheritance. In his sole discretion, he shall disburse funds from the estate to [Charity], and to Organizations for the preservation and care of orphan animals. It is up to his sole discretion without question and without the necessity of external intervention to disburse randomly, as he sees fit, funds to the above organizations and any remainder is to be retained by him as he sees fit.

On Date 1, Decedent conveyed her residence to herself and Attorney as joint tenants with right of survivorship. On Date 3, Decedent transferred securities into a joint brokerage account in the name of herself and Attorney as joint tenants with right of survivorship.

Decedent died on Date 4. Following her death, approximately \$a was distributed to charitable beneficiaries in accordance with the third paragraph of the will. The value of Decedent's estate was estimated at approximately \$b. As the surviving joint tenant, Attorney took possession of the residence and the securities. Attorney also sold the residence and is in possession of the proceeds.

On Date 5, County Court appointed Individual, as the temporary administrator of the estate, and also appointed a guardian ad litem to represent the interests of unknown distributees. On Date 6, Attorney petitioned County Court requesting that Decedent's will be admitted to probate and that he be appointed as executor for the estate.

On Date 7, the Attorney General of State, on behalf of the ultimate charitable beneficiaries of Decedent's will, filed objections to the will and requested that the portions of the will that appoint Attorney as executor and that provide for any bequest to Attorney be stricken.

On Date 8, Individual filed a petition in County Court seeking a return of the joint brokerage account and proceeds of the sale of Decedent's residence. On Date 9, County Court cited Attorney to show cause why a decree should not be made to grant Individual's request.

Attorney, Individual, and the Attorney General are involved in a contested probate proceeding over the validity of Decedent's will. In an attempt to avoid the expenses and uncertainties of continued litigation, the parties have agreed on a proposed settlement by which a fixed dollar amount from the joint brokerage account and the sales proceeds of the residence will be returned to the estate, to be distributed outright and without limitation as part of the residuary estate among the class of charitable beneficiaries described in the will.

In accordance with the proposed settlement, the third paragraph of the will is to be reformed to provide, in relevant part, that the residuary estate is to be divided into two parts, Part A and Part B. Part A is to be distributed to three charitable organizations pursuant to a formula agreed to by the parties. Part B is to be distributed to Attorney.

You have requested the following ruling:

The payments from the residuary estate to the charitable organizations under the proposed settlement agreement between Attorney, Individual, and the Attorney General, will be deductible as a charitable transfer under § 2055 of the Internal Revenue Code.

LAW AND ANALYSIS

Section 2055(a) provides that the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all transfers for charitable purposes.

Section 20.2055-1(a) of the Estate Tax Regulations provides, in part, that a deduction is allowed under § 2055(a) from the gross estate of a decedent who was a citizen or resident of the United States at the time of his death for the value of property included in the decedent's gross estate and transferred by the decedent during his lifetime or by will for charitable purposes.

Section 20.2056(c)-2(d)(2), applicable in the case of the estate tax marital deduction, provides that, if as a result of the controversy involving the decedent's will, or involving any bequest or devise thereunder, a property interest is assigned or surrendered to the surviving spouse, the interest so acquired will be regarded as having passed from the decedent to the surviving spouse only if the assignment or surrender was a bona fide recognition of enforceable rights of the surviving spouse in the decedent's estate. If the assignment or surrender was pursuant to an agreement not to contest the will, it will not necessarily be accepted as a bona fide evaluation of the rights of the spouse. This regulation is equally applicable for purposes of the charitable deduction.

In Ahmanson Foundation v. United States, 674 F.2d 761 (9th Cir. 1981), the court considered whether a marital deduction was allowable for property distributed to

the decedent's spouse pursuant to a settlement agreement. Relying on Commissioner v. Estate of Bosch, 387 U.S. 456 (1967), the court concluded that a good faith settlement must be based upon an enforceable right, under state law properly interpreted, in order to qualify the property distribution as "passing" from the decedent for purposes of the federal estate tax marital deduction.

This principle has been found to be equally applicable in determining whether an amount passing to charity pursuant to a settlement agreement is deductible under § 2055. See Terre Haute First Nat'l Bank v. United States, 1991 U. S. Dist. Lexis 5771 *24, note 7 (Dist. Ct. S.D. Ind. 1991). Thus, in the present case, a deduction is allowable under § 2055(a) to the Decedent's estate for the amounts paid to charity pursuant to the settlement agreement if:

- (1) The settlement agreement was negotiated, and is in settlement of a bona fide will contest;
- (2) The charities have an enforceable right to the residue of the Decedent's estate under State law, and the payments are in recognition of that right;
- (3) The payments do not exceed what the charities would have received if they had pursued their rights in litigation; and
- (4) The form of the payments passing to the charities under the settlement agreement resembles the form of the benefits that the charities could have received under the terms of Decedent's will.

For purposes of § 2055, a charitable deduction is allowable only for what is actually received by the charity. Ahmanson Foundation at 772.

Therefore, in the instant case, we must determine whether the charitable organizations had an enforceable right under properly applied state law to receive a portion of the residuary estate under the proposed settlement agreement.

Under the law of State, the concept of undue influence does not readily lend itself to precise definition or description. But the courts of State have long ago established the criteria by which undue influence is to be determined:

For a will to be invalidated based on undue influence, it must be shown that the influence exercised amounted to a moral coercion, which restrained independent action and destroyed free agency, or which, by importunity which could not be resisted, constrained the testator to do that which was against his free will and desire, but which he was unable to refuse or too weak to resist.

Citation 1. Citation 2.

Under the law of State:

Attorneys for clients who intend to leave them or their families a bequest would do well to have the will drawn by some other lawyer. Any suspicion which may arise of improper influence used under the cover of the confidential relationship may thus be avoided. The law, recognizing the delicacy of the situation, requires the lawyer who drafts himself a bequest to explain the circumstances and to show in the first instance that the gift was freely and willingly made. . . . In the absence of any explanation a jury may be justified in drawing the inference of undue influence, although the burden of proving it never shifts from the contestant.

Citation 3.

In this case, Attorney drafted a will for Decedent was named as a beneficiary. Under the facts of this case and under State law, there is a strong argument that Attorney exerted undue influence over Decedent. If a court found that undue influence was present, the court could invalidate the provisions in the will that benefit Attorney, and the residue of the estate would pass to the charitable organizations. Thus, assuming that undue influence is found, the charitable organizations have an enforceable right to receive the residuary estate. Further, the settlement agreement was negotiated in settlement of a bona fide will contest. The charities have an enforceable right to the residue of Decedent's estate under State law, and the payments are in recognition of that right. The payments under Part A of the settlement agreement do not exceed what the charities would have received if they had pursued their rights in litigation. Finally, the form of the payments passing to the charities under the settlement agreement resembles the form of the benefits that the charities could have received under the terms of Decedent's will. Therefore, based on the facts presented and the representations made, we conclude that the payments to the charitable organizations under the proposed settlement agreement between Attorney, Individual, and the Attorney General, will be deductible as a charitable transfer under § 2055.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury

statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: